DREW S. SHERIDAN P.A.

A General Practice Law Firm

7765 S.W. 87th Avenue, Suite 102
Miami, Florida 33173
Tel. (305) 596-3368
Visit our Website: www.drewsheridanpa.com
Questions?? Email drewsheridan@drewsheridanpa.com

Real Estate, Evictions, Foreclosures	Bankruptcy
Mortgage Law & Financing	Wills, Trusts, Probate, Guardianship
Divorce and Family Law	Corporations, Contracts & Small Business

CLIENT NEWSLETTER

REAL ESTATE ROUNDUP

Final Rules on Capital Gains

The Internal Revenue Service has issued its final rules on the capital gains tax exclusion that is available on the sale of a taxpayer's principal residence. A taxpayer may exclude up to $250,000 from the sale of a principal residence, and the exclusion doubles to $500,000 for married taxpayers. However, the taxpayer must have owned and used the property as a principal residence for a total of at least two of the five years before the residence is sold.

The final rules focus on the part of the Internal Revenue Code that allows a taxpayer who fails to meet the above condition to still have an exclusion in a reduced amount. There are three grounds for claiming a reduced exclusion: change in employment, health, and unforeseen circumstances. For each of these grounds, the regulations provide a general definition and one or more "safe harbors"—specific reasons for the sale of the residence. If the safe harbor for a particular ground applies, a sale (or exchange) is deemed to be "by reason of" that ground. If no safe harbor applies, the taxpayer still can claim one of the grounds on the basis of all of the surrounding facts and circumstances.

For example, the safe harbor for claiming a reduced exclusion because of a change in employment applies when the new place of employment is at least 50 miles farther from the residence that was sold than was the former place of employment. As for health, the safe harbor that smooths the way for the reduced exclusion is a physician's recommendation of a change of residence for reasons of health. A sale or exchange of a residence due to unforeseen circumstances refers to the occurrence of an event that the taxpayer could not reasonably have anticipated before purchasing and occupying the residence. Simply wanting to move to a preferred home or moving due to improved financial circumstances does not qualify. The specific events that make up the safe harbor for this ground include, among other things, such circumstances as death, divorce, natural or man-made disasters affecting the house, and even multiple births from a single pregnancy.

Town Cannot Zone Out Synagogues

Two small Jewish congregations leased second-floor space in a bank building in the business district of a small town. Under the town's zoning ordinance, churches and synagogues were allowed in only one of the town's eight zoning districts. Unfortunately for the congregations, their location was not in that district. When the town tried to direct the congregations out of the business district and into the one district where synagogues were allowed, the worshipers objected. They maintained that there was no suitable location in that district and that such a move was not practical or convenient for the many members who had to walk to services.

When the dispute eventually reached federal court, the congregations ultimately prevailed on a claim brought under the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). Essentially, that law prohibits a governmental entity from implementing a land-use regulation in a manner that treats a religious assembly or institution less favorably than a nonreligious assembly or institution. The town's ordinance ran afoul of the RLUIPA because it permitted private clubs, social clubs, and lodges in the same business district in which it banned churches and synagogues.

The town argued that it was reasonable to keep houses of worship out of the business district because they eroded the tax base and reduced the vitality of the retail areas. The court agreed with the congregations' response that the places of worship were no more of a drag on business than the clubs and lodges that were allowed in the business district. In fact, there was evidence that members of the congregations regularly stimulated the local economy as they patronized shops on the way to and from the synagogues. There was no comparable stimulus from members of private clubs, who gathered less often and sometimes during nonbusiness hours. All that was left to explain the town's treatment of the congregations, as compared to the town's treatment of the congregations' secular counterparts, was the religious nature of their activities. It was just such discrimination that Congress meant to prohibit when it enacted the RLUIPA.

Handicapped-Accessible Apartments

In its role as enforcer of the Fair Housing Act (FHA), the U.S. Department of Justice sued the developer of, and architects for, two apartment complexes. The government won an injunction against any further construction and occupancy of the apartment buildings.

Among the detailed requirements in the FHA for accessibility for the disabled is a requirement that “common areas” for multifamily dwellings be readily accessible to and usable by handicapped persons. In the case under consideration, the focus was on the landing area shared by two ground-floor apartments in each complex. The front door for each of the apartments was located there, but it was not handicapped accessible because the landing could only be reached by descending stairs. The apartments also had a rear entrance from the apartments' patios that was handicapped accessible, but it was located farther from the parking lot.

The defendants argued that the FHA only requires that there be at least one accessible route into and out of each apartment, and that the patio entrance for each ground-floor unit met that requirement. The federal court disagreed. All it took to make the landing area a “common area” was that it was shared by at least two units, and that was so in the case before the court. It was beside the point that there was a separate, back-door access for the disabled. The FHA clearly mandates that the common area, which in this case was at the front-door entrance to the apartments, be handicapped accessible.

The court indicated that the public's strong interest in eradicating housing discrimination against the disabled outweighed the developer's plea that the injunction translated into substantial financial losses each month. The government also pointed out that the developer chose to proceed at its own peril with construction and leasing after being warned that the design violated the FHA. This case offers an object lesson in the importance of being in compliance with FHA requirements *before* breaking ground on a construction project.

PREGNANCY DISCRIMINATION AT WORK

In 1978, Congress amended the Civil Rights Act of 1964 to include a more specific prohibition on pregnancy-related discrimination. Ever since then, it has been unlawful for employers having 15 or more employees to discriminate on the basis of pregnancy, childbirth, and related medical conditions.

The most clear-cut forms of pregnancy discrimination occur when an employer refuses to hire an applicant because she is pregnant or fires an existing employee because she becomes pregnant. But there are more subtle, but no less prohibited, forms of pregnancy discrimination, such as in the areas of accrual and crediting of seniority, compensation, leave from work, health insurance, and other fringe benefits. Although pregnancy is in many ways a unique condition, a rule of thumb for employers is that they may not treat pregnant employees adversely as compared with employees having comparable temporary medical conditions.

If, because of her pregnancy, an employee is temporarily unable to work, she must be treated like any other temporarily disabled employee. This standard does not render an employer powerless to require anything of the employee, but the approach must be even-handed. For example, if the employer normally requires a doctor's statement verifying an inability to work, the same can be required of a pregnant employee.

If the employer has a policy allowing temporarily disabled workers to ease back into work with modified tasks or different assignments, similar flexibility must be shown to the pregnant worker. If an employer generally holds open a job for a certain period of time for someone out on sick leave or disability leave, a pregnant employee is entitled to such treatment, no more or less.

Ironclad rules are more likely to expose companies to liability under the federal discrimination law. A rule requiring a pregnant employee on leave to stay on leave until the baby is born, regardless of whether she may have recovered from the condition related to the pregnancy, invites a lawsuit. Employers also cannot have a policy that prohibits an employee from returning to work for a predetermined time period after giving birth.

MINIMIZE YOUR RISK OF IDENTITY THEFT

Whether we like it or not, identity thieves are resourceful. Their methods are as varied as the ways in which consumers need to use some form of identification to initiate and complete transactions. It can all be confusing and intimidating, but consumers need not feel helpless against the expanding threat of identity theft. For most of the tactics used by the bad guys, there are countermeasures for consumers. These measures cannot completely insure that a consumer's identity is safe, but the odds of becoming a victim decline with each protective step taken. What follows is a nonexhaustive collection of safeguards you can put in place to lower the chances that a stranger will do you harm, even as he adds the insult of pretending to be you.

In the Short Term

* Obtain, review, and insure the accuracy of your credit report from each of the three major credit bureaus. These reports have information on where you work and live, your credit accounts, how you pay your bills, and whether you have been sued or arrested or have filed for bankruptcy.
* Use random passwords on your credit card, bank, and telephone accounts rather than birthdays, initials, or other obvious passwords.
* Make sure that the personal information in your home is secure, especially when you have roommates, employ outside workers, or have service and repair work done in your home.
* Look into security procedures for personal information at work. You should be able to find out who can access your information, how your records are kept secure, and what the employer's procedures are for the disposal of records.

Good Habits to Acquire

* Unless you initiated the contact or you know to a certainty whom you are communicating with, do not give out personal information over the telephone, through the mail, or over the Internet. Before sharing information with an organization, use a website or telephone directory to check on its legitimacy.
* Remove your regular mail as promptly as possible from your mailbox before a would-be identity thief beats you to it. For outgoing mail, put it into a collection box rather than leaving it to be picked up from your mailbox. Let the Postal Service hold your mail if you are going to be away.
* Yes, it may sound like overkill at home, but it still makes sense to shred or tear up all those discarded charge receipts and similar papers with personal information. There are people out there more than willing to go through your garbage if it means they get to use your credit cards.
* Travel light, financially speaking. Carry only such identifying information, or credit and debit cards, as you will actually need.
* Stay on top of the timing of your credit card bills. A late or missing bill may be a sign that a thief already has taken over your account.
* Approach promotional contacts with a healthy skepticism. Phony offers are too often successful in getting personal information straight from the victim himself.
* Secure your Social Security number. Keep the card itself in a safe place, not on your person. Ask questions and be satisfied by the answers if any person or business asks for your number. There are some legitimate reasons for giving out your number, but it is not a good enough reason when a business simply wants your number as part of its standard record keeping.

Cyber Danger

Computers have their own unique set of threats to the security of your identity, but there is good advice for the wary here, too. Update virus protection software regularly. Do not download files or click on hyperlinks coming from strangers. Use a secure browser and a firewall program, especially if you use a high-speed Internet connection. Avoid storing financial information on a laptop but, if you must, use a strong, random password, do not use an automatic log-in feature, and always log off when you are finished.

MORE BUSINESSES ELIGIBLE FOR C-EZ

The Internal Revenue Service introduced Schedule C-EZ, a simplified expense form, for use by small businesses preparing Form 1040. The IRS recently announced that it will expand the number of small businesses eligible to use the form by 15%, or about 500,000 businesses, beginning with tax year 2004.

The greater availability of Schedule C-EZ will be accomplished by doubling the business expense threshold for businesses that can use the form from $2,500 to $5,000. This change could save as much as five million hours of paperwork for small business taxpayers.

BUSINESS LIABLE FOR NOT INVESTIGATING CREDIT COMPLAINT

Four years after Edward opened a credit card account with one of the major credit card companies, he married Linda. Linda became an authorized user of the card, but she was not, as the credit card company would later claim, a co-applicant for the card. Some years later, without telling Linda, Edward filed for bankruptcy. The credit card company took Edward's name off of the account and notified Linda that she was responsible for the balance on the account, which amounted to many thousands of dollars. After she learned about Edward's secretive bankruptcy, Linda left Edward. But when she tried to buy a condominium on her own, she could not qualify for a mortgage because of the big credit card debt that showed up on her credit record.

Linda's efforts to free herself from the effects of Edward's overspending began by getting copies of her credit reports from all three major credit reporting agencies. These reports confirmed her worst fears, showing her as being legally responsible for the credit card balance. Linda notified the reporting agencies that she disputed the fact that she was obligated on the account, and the agencies informed the credit card company of Linda's position.

In response to learning that Linda was challenging her responsibility for the debt, the credit card company was required by the federal Fair Credit Reporting Act to conduct an "investigation" regarding the disputed information. The nature and extent of that investigative duty became the focus of Linda's lawsuit under the Act. She filed suit when the company continued to maintain that Linda was responsible for the debt, thereby leaving in place the black cloud over her credit picture.

Linda won her case, with an award of damages for good measure. The credit card company had not satisfied its duty to investigate. After hearing from the credit reporting agencies, the company simply confirmed that the disputed information provided by the agencies matched the account information in its computer system. This cursory review was no "investigation." Federal law required the creditor to look beyond the bare information in its customer information system, such as by consulting underlying documents. In this case, the most important document would have been the credit card application submitted by Edward. As it happened, the company had lost the application, but that did not get it off the hook. Had the company done enough to discover that the key document was missing, it at least could have informed the credit reporting agencies that there was no conclusive proof that Linda was responsible for the credit card debt.

FDIC INSURANCE FOR REVOCABLE TRUSTS

In 2004, the Federal Deposit Insurance Corporation (FDIC) put in place new rules for insurance coverage of living trust accounts in FDIC-insured institutions. A living trust, sometimes called a family trust, is a formal revocable trust. Its owner specifies who will receive the trust assets when the owner dies. During his or her lifetime, the owner, also known as a grantor or settlor, maintains control of the trust assets and has the power to make changes in the trust.

The owner of a living trust account is insured up to $100,000 per beneficiary if each of the following three requirements is met:

(1) The beneficiary must be the owner's spouse, child, grandchild, parent, or sibling. Not every relative qualifies. For example, cousins, nieces, and nephews do not qualify, but stepparents, stepchildren, and adopted children do.

(2) The beneficiary must become entitled to his or her interest in the trust when the owner dies. FDIC insurance coverage would be based on the beneficiaries who satisfy this requirement as of the time when a bank fails.

(3) The title of the account at the bank must indicate, with terms such as "living trust" or "family trust," that the account is held by a trust.

While insurance coverage is based on the actual interests of each beneficiary, the FDIC will assume that the beneficiaries have equal interests in the trust account unless the trust states otherwise. By way of a simple example, if a father has a living trust leaving all of the trust assets equally to his three children, the account would be insured up to $300,000. The total coverage consists of $100,000 for each of the three qualifying beneficiaries, who would become owners of the trust when their father dies.